IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.MC.No. 639 of 2007()

CC.511/2003 of JUDL.MAGISTRATE OF FIRST CLASS, AMABALAPUZHA
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PETITIONER: ACCUSED

RAJESH, S/O.RAJAPPAN,
THAIPARAMBU VEEDU, VELIYANADU PANCHAYAT,
WARD-I, VELIYANADU VILLAGE.

BY ADV. SRI.K.S.VIJAYAKUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.639 of 2007

Dated this the 8th day of March 2007

O R D E R

The petitioner is one of the 34 accused in a prosecution interalia for the offences punishable under Sections 186, 341 and 506(1) read with 149 I.P.C. The alleged incident had taken place as early as on 12/10/2005. Some of the co-accused have already been tried, found not guilty and acquitted. The petitioner was not available for trial. According to the petitioner, he had no knowledge of the proceedings at all. He had secured an employment in the Assam Rifles as a Constable. The petitioner, now wants to surrender before the learned Magistrate. He apprehends that his application for bail may not be considered on merits, in accordance with law and expeditiously. He further submits that the co-accused having already been acquitted, no useful purpose is likely to be served by continuation of the prosecution against him. In these circumstances, it is further prayed that powers under Section 482 Cr.P.C may be invoked to bring the unnecessary prosecution against the petitioner to premature termination.

2. The Full Bench of this court in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] has made it clear that the mere fact that the co-accused who faced trial has secured an acquittal on the basis of hostility of witnesses or on the basis of the evidence in the trial against them is no reason by itself for an absconding co-accused to claim any benefit or advantage. I have gone through the findings in the judgment of acquittal. An incident is spoken to by witnesses. The accused, who faced trial, have not identified to be the accused persons involved in the commission of the crime. It is for that reason that such accused persons were found not guilty and acquitted. Such an acquittal, as held in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] cannot deliver any advantage to the petitioner. I am, in these circumstances, not persuaded to agree that the prosecution deserves to be quashed under Section 482 Cr.P.C. However, I do note that the petitioner has now secured an employment and I need only observe that it will only be appropriate for the learned Magistrate to dispose of the case, as expeditiously as possible.

3. I find no circumstances justifying issue of directions under Section 482 Cr.P.C regarding grant of bail. It is for the petitioner to appear before the learned Magistrate and explain to

the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

4. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the learned Public Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. The case against the petitioner must also be disposed of expeditiously.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006